

HOUSE BILL NO. 703

INTRODUCED BY PARKER, HARRIS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS GOVERNING CHILD ABUSE AND NEGLECT; AMENDING THE DEFINITION OF "PSYCHOLOGICAL ABUSE OR NEGLECT"; PROVIDING PROTECTIONS FOR VICTIMS OF PARTNER AND FAMILY MEMBER ASSAULT REGARDING CHILD REMOVAL AND EMERGENCY PROTECTIVE SERVICES; AMENDING SECTIONS 41-3-102 AND 41-3-301, MCA; AND PROVIDING EFFECTIVE DATES."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 41-3-102, MCA, is amended to read:

"41-3-102. Definitions. As used in this chapter, the following definitions apply:

(1) "Abandon", "abandoned", and "abandonment" mean:

(a) leaving a child under circumstances that make reasonable the belief that the parent does not intend to resume care of the child in the future;

(b) willfully surrendering physical custody for a period of 6 months and during that period not manifesting to the child and the person having physical custody of the child a firm intention to resume physical custody or to make permanent legal arrangements for the care of the child;

(c) that the parent is unknown and has been unknown for a period of 90 days and that reasonable efforts to identify and locate the parent have failed; or

(d) the voluntary surrender, as defined in 40-6-402, by a parent of a newborn who is no more than 30 days old to an emergency services provider, as defined in 40-6-402.

(2) "A person responsible for a child's welfare" means:

(a) the child's parent, guardian, foster parent or an adult who resides in the same home in which the child resides;

(b) a person providing care in a day-care facility;

(c) an employee of a public or private residential institution, facility, home, or agency; or

(d) any other person responsible for the child's welfare in a residential setting.

(3) "Abused or neglected" means the state or condition of a child who has suffered child abuse or

1 neglect.

2 (4) (a) "Adequate health care" means any medical care or nonmedical remedial health care recognized
3 by an insurer licensed to provide disability insurance under Title 33, including the prevention of the withholding
4 of medically indicated treatment or medically indicated psychological care permitted or authorized under state
5 law.

6 (b) This chapter may not be construed to require or justify a finding of child abuse or neglect for the sole
7 reason that a parent or legal guardian, due to religious beliefs, does not provide adequate health care for a child.
8 However, this chapter may not be construed to limit the administrative or judicial authority of the state to ensure
9 that medical care is provided to the child when there is imminent substantial risk of serious harm to the child.

10 (5) "Best interests of the child" means the physical, mental, and psychological conditions and needs
11 of the child and any other factor considered by the court to be relevant to the child.

12 (6) "Child" or "youth" means any person under 18 years of age.

13 (7) (a) "Child abuse or neglect" means:

14 (i) actual harm to a child's health or welfare;

15 (ii) substantial risk of harm to a child's health or welfare; or

16 (iii) abandonment.

17 (b) The term includes actual harm or substantial risk of harm by the acts or omissions of a person
18 responsible for the child's welfare.

19 (c) The term does not include self-defense, defense of others, or action taken to prevent the child from
20 self-harm that does not constitute harm to a child's health or welfare.

21 (8) "Concurrent planning" means to work toward reunification of the child with the family while at the
22 same time developing and implementing an alternative permanent plan.

23 (9) "Department" means the department of public health and human services provided for in 2-15-2201.

24 (10) "Family group conference" means a meeting that involves family members in either developing
25 treatment plans or making placement decisions, or both.

26 (11) "Harm to a child's health or welfare" means the harm that occurs whenever the parent or other
27 person responsible for the child's welfare:

28 (a) inflicts or allows to be inflicted upon the child physical abuse, physical neglect, or psychological
29 abuse or neglect;

30 (b) commits or allows to be committed sexual abuse or exploitation of the child;

(c) induces or attempts to induce a child into giving untrue testimony that the child or another child was abused or neglected by a parent or person responsible for the child's welfare;

(d) causes malnutrition or failure to thrive or otherwise fails to supply the child with adequate food or fails to supply clothing, shelter, education, or adequate health care, though financially able to do so or offered financial or other reasonable means to do so;

(e) exposes or allows the child to be exposed to an unreasonable risk to the child's health or welfare by failing to intervene or eliminate the risk; or

(f) abandons the child.

(12) "Limited emancipation" means a status conferred on a youth by a court in accordance with 41-3-438 under which the youth is entitled to exercise some but not all of the rights and responsibilities of a person who is 18 years of age or older.

(13) "Parent" means a biological or adoptive parent or stepparent.

(14) "Parent-child legal relationship" means the legal relationship that exists between a child and the child's birth or adoptive parents, as provided in Title 40, chapter 6, part 2, unless the relationship has been terminated by competent judicial decree as provided in 40-6-234, Title 42, or part 6 of this chapter.

(15) "Permanent placement" means reunification of the child with the child's parent, adoption, placement with a legal guardian, placement with a fit and willing relative, or placement in another planned permanent living arrangement until the child reaches 18 years of age.

(16) "Physical abuse" means an intentional act, an intentional omission, or gross negligence resulting in substantial skin bruising, internal bleeding, substantial injury to skin, subdural hematoma, burns, bone fractures, extreme pain, permanent or temporary disfigurement, impairment of any bodily organ or function, or death.

(17) "Physical neglect" means either failure to provide basic necessities, including but not limited to appropriate and adequate nutrition, protective shelter from the elements, and appropriate clothing related to weather conditions, or failure to provide cleanliness and general supervision, or both.

(18) (a) "Psychological abuse or neglect" means severe maltreatment through acts or omissions that are injurious to the child's emotional, intellectual, or psychological capacity to function, including the commission of acts of violence against another person residing in the child's home.

(b) The term may not be construed to hold a victim responsible for the omission of failing to prevent the crime against the victim.

1 (19) "Reasonable cause to suspect" means cause that would lead a reasonable person to believe that
2 child abuse or neglect may have occurred or is occurring, based on all the facts and circumstances known to
3 the person.

4 (20) "Residential setting" means an out-of-home placement where the child typically resides for longer
5 than 30 days for the purpose of receiving food, shelter, security, guidance, and, if necessary, treatment.

6 (21) (a) "Sexual abuse" means the commission of sexual assault, sexual intercourse without consent,
7 indecent exposure, deviate sexual conduct, sexual abuse, ritual abuse, or incest, as described in Title 45,
8 chapter 5.

9 (b) Sexual abuse does not include any necessary touching of an infant's or toddler's genital area while
10 attending to the sanitary or health care needs of that infant or toddler by a parent or other person responsible
11 for the child's welfare.

12 (22) "Sexual exploitation" means allowing, permitting, or encouraging a child to engage in a prostitution
13 offense, as described in 45-5-601 through 45-5-603, or allowing, permitting, or encouraging sexual abuse of
14 children as described in 45-5-625.

15 (23) "Social worker" means an employee of the department who, before the employee's field
16 assignment, has been educated or trained in a program of social work or a related field that includes cognitive
17 and family systems treatment or who has equivalent verified experience or verified training in the investigation
18 of child abuse, neglect, and endangerment. This definition does not apply to any provision of this code that is
19 not in this chapter.

20 (24) "Treatment plan" means a written agreement between the department and the parent or guardian
21 or a court order that includes action that must be taken to resolve the condition or conduct of the parent or
22 guardian that resulted in the need for protective services for the child. The treatment plan may involve court
23 services, the department, and other parties, if necessary, for protective services.

24 (25) "Unfounded" means that after an investigation, the investigating person has determined that the
25 reported abuse, neglect, or exploitation has not occurred.

26 (26) (a) "Withholding of medically indicated treatment" means the failure to respond to an infant's
27 life-threatening conditions by providing treatment, including appropriate nutrition, hydration, and medication, that,
28 in the treating physician's or physicians' reasonable medical judgment, will be most likely to be effective in
29 ameliorating or correcting the conditions.

30 (b) The term does not include the failure to provide treatment, other than appropriate nutrition, hydration,

or medication, to an infant when, in the treating physician's or physicians' reasonable medical judgment:

(i) the infant is chronically and irreversibly comatose;

(ii) the provision of treatment would:

(A) merely prolong dying;

(B) not be effective in ameliorating or correcting all of the infant's life-threatening conditions; or

(C) otherwise be futile in terms of the survival of the infant; or

(iii) the provision of treatment would be virtually futile in terms of the survival of the infant and the treatment itself under the circumstances would be inhumane. For purposes of this subsection (26), "infant" means an infant less than 1 year of age or an infant 1 year of age or older who has been continuously hospitalized since birth, who was born extremely prematurely, or who has a long-term disability. The reference to less than 1 year of age may not be construed to imply that treatment should be changed or discontinued when an infant reaches 1 year of age or to affect or limit any existing protections available under state laws regarding medical neglect of children 1 year of age or older.

(27) "Youth in need of care" means a youth who has been adjudicated or determined, after a hearing, to be or to have been abused, neglected, or abandoned."

Section 2. Section 41-3-301, MCA, is amended to read:

"41-3-301. Emergency protective service. (1) Any child protective social worker of the department, a peace officer, or the county attorney who has reason to believe any youth is in immediate or apparent danger of harm may immediately remove the youth and place the youth in a protective facility. The department may make a request for further assistance from the law enforcement agency or take appropriate legal action. The person or agency placing the child shall notify the parents, parent, guardian, or other person having legal custody of the youth at the time the placement is made or as soon after placement as possible. Notification under this subsection must include the reason for removal, information regarding the show cause hearing, and the purpose of the show cause hearing.

(2) If a social worker of the department, a peace officer, or the county attorney determines in an investigation of abuse or neglect of a child that the child is in danger because of the occurrence of partner or family member assault, as provided for in 45-5-206, against an adult member of the household or that the child needs protection as a result of the occurrence of partner or family member assault against an adult member of the household, the department shall take appropriate steps for the protection of the child, including WHICH MAY

1 INCLUDE:

2 (a) making reasonable efforts to protect the child and prevent the removal of the child from the parent
3 or guardian who is a victim of alleged partner or family member assault;

4 (b) making reasonable efforts, which may include the adult victim obtaining an order of protection
5 pursuant to Title 40, chapter 15, part 2, to remove the person who allegedly committed the partner or family
6 member assault from the child's residence if it is determined that the child or another family or household
7 member is in danger of partner or family member assault; and

8 (c) providing services to help protect the child from being placed with or having unsupervised visitation
9 with the person alleged to have committed partner or family member assault until the department determines
10 that the alleged offender has met conditions considered necessary to protect the safety of the child.

11 (3) If the department determines that an adult member of the household is the victim of partner or family
12 member assault, the department shall provide the adult victim with a referral to a domestic violence program.

13 ~~(2)~~(4) A child who has been removed from the child's home or any other place for the child's protection
14 or care may not be placed in a jail.

15 ~~(3)~~(5) An abuse and neglect petition must be filed within 2 working days, excluding weekends and
16 holidays, of emergency placement of a child unless arrangements acceptable to the agency for the care of the
17 child have been made by the parents. A show cause hearing must be held within 10 days, excluding weekends
18 and holidays, of the filing of the initial petition unless otherwise stipulated by the parties pursuant to 41-3-434.

19 ~~(4)~~(6) The department shall make the necessary arrangements for the child's well-being as are required
20 prior to the court hearing."

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22 NEW SECTION. Section 3. Effective dates. (1) [Section 1 and this section] are effective on passage
23 and approval.

24 (2) [Section 2] is effective October 1, 2003.

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